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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,288	12/08/2004	Ernst-Christian Koch	18452	4319

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GARDEN CITY, NY 11530

EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/517,288	<b>Applicant(s)</b> KOCH ET AL.	
	<b>Examiner</b> David J. Parsley	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 10-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **Detailed Action**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10-18-06 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No.

4,838,167 to Prahauser et al.

Referring to claim 10, Prahauser et al. discloses a fog projectile which is insertable into a projector barrel, the projectile having an active charge comprising a pyrotechnic active material for producing a large-sized aerosol fog curtain, which emits in the infrared range and which is visually impenetrable – see at 12,13 in figure 1, column 2 lines 50-68 and column 3 lines 1-

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18, wherein the active charge – at 13,15,23-29, is a hollow cylindrical stack consisting of a plurality of axially superimposed layers – at 13,15, each being constituted of hollow cylindrical solid segments – at 13,15, 23-29, each constituted of a compressed pyrotechnically active material – at 15, with a through extending hollow space – see at 29 in figure 4, an enclosure – at 14, consisting of a combustible foil sheathing – at 14, peripherally initially encompassing the active charge – at 13,15 – see figure 2, and a top end of the stack – see figures 1-3, a single firing charge – at 22,26,27 in figure 4, forming the lowermost layer of the stack and concurrently acting as an ejection charge, a bottom closure disc – see at the bottom of 16 or 18 in figure 3, connected to a peripherally lower end of the combustible foil – see the connection via the intervening components – at 16,18,23-28 in figure 4, and which is arranged beneath the stack and covers the lowermost layer of the stack of layers – see figures 1-4, and an electrical firing element – at 20,21, projecting into the firing charge through an opening – see proximate 29, formed in the disc – see at 20 in figure 3 and see column 4 lines 33-66 which describes the operation of the device which is done electrically via computer controls which initiates the detonation of the device via the electrical fuse – at 20,21.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prahauer et al. as applied to claim 10 above.

Referring to claim 11, Prahauer et al. further discloses the foil sheathing – at 14 is made of paper – see column 3 lines 19-42. Prahauer et al. does not disclose the paper is saturated with paraffin. However, applicant does not disclose that the paper saturated in paraffin is critical to the operation of the invention in view of other materials comprising the foil. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Prahauer et al. and add the paper foil saturated in paraffin, so as to allow for the device to combust/burn slower during use.

Referring to claim 12, Prahauer et al. does not disclose the disc is made of pressed fiber material. However, applicant does not disclose that making the disc out of a pressed fiber material is critical to the operation of the invention in view of other types of materials which could be used for the disc. Therefore, it would have been obvious to one of ordinary skill in the art to take the device of Prahauer et al. and add the disc made of fiber, so as to allow for the disc to be combustible and burn away during use.

Referring to claim 13, Prahauer et al. further discloses the projectile is dimensioned such that the enclosure breaks open, such that the combustible foil sheathing forming the enclosure combusts and ruptures at a distance along the trajectory thereof upon firing and ejection of the charge from the projector barrel (not shown), so as to facilitate the dispersion and fanning out of the solid segments forming the pyrotechnically active charge and to produce from the dispersed solid segments upon combustion thereof – see for example column 4 lines 8-66. Prahauer et al. does not disclose that the enclosure breaks open about 5 to 10 meters along its trajectory.

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However, as seen in column 4 lines 33-37 of Prahauer et al., the device can be made to break apart at the requested height which means the height at which the device is detonated/breaks apart is controllable via the computer described in column 4 lines 56-62. Therefore, since this limitation is a for use limitation/functional language, it is deemed that the device of Prahauer et al. is capable of breaking apart at 5 to 10 meters along its trajectory. Therefore, it would have been obvious to one of ordinary skill in the art to take the device of Prahauer et al. and add the projectile breaking apart at 5 to 10 meters along its trajectory, so as to allow for the device to provide low visibility over an object located near the projectile.

#### *Response to Arguments*

4. Regarding claim 10, applicant argues that the function of the foil – at 14 of the Prahauer et al. reference US 4838167 is different than the function of the foil used in applicant's invention. However, these functional differences are not presented in the claim language and further the claims are apparatus claims and it is deemed that the Prahauer et al. reference is capable of performing these functions to form a cloud as claimed as seen in column 4 lines 34-68 and column 5 lines 1-20 and thus applicant's arguments are not persuasive.

#### *Conclusion*

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David Parsley  
Patent Examiner  
Art Unit 3643